IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5024 OF 2005

Deoram Shankar Warde ..Petitioner.
Vs.
The Deputy Conservator of Forests,
West, Nasik Division, Nasik & Ors. ..
Respondents.

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Mr. K.N. Kore for the Petitioner.
Mr. C.R. Sonawane, AGP for the Respondents.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

6th March, 2006.

P.C. :

1. This case has a chequered history. The Petitioner wants the compensation of the trees on the land whose possession was taken way back in the year 1970. The Petitioner has prayed in this Petition for a direction to the Respondents to comply with the application filed by the Petitioner to the Respondents on 8th April, 2005 and make a payment of Rs.52,80,633/- to the Petitioner as per Award No.140/2003 passed by Respondent No.2 on 3rd February, 2003 in accordance with the orders and direction given by this Court in Writ Petition 3505 of 2002 on 5th September, 2002

forthwith along with interest at the rate of 16% per annum from the date of the award i.e. 3rd February, 2003. The Petitioner has also prayed for setting aside the order dated 7th April, 2005 passed by Respondent No.2, the Sub-Divisional Officer, Kalwan.

2. We have heard the learned counsel appearing for the parties at length. We have also gone through the averments made in the Petition as well as in the reply affidavit. From the record it appears that the Petitioner moved this Court with the very relief prayed for in the Petition, without any success. This is the third Petition he has filed taking advantage of the observations made by the earlier Courts. In Writ Petition 3505 of 2002 it was prayed that a direction be issued to the Respondents to consider the application filed by the Petitioner on 18th July, 2001 requesting the Respondents to evaluate market value of the growth of trees standing on 26 Hectors 74 Ares 46 points of Agricultural Jirayat lands which is declared as an excess land in accordance with the orders passed by the Tahsildar, Surgana under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

3. The Division Bench in its order dated 5th September, 2002

simply directed Respondent No.1 - The Deputy Conservator of Forests, Nashik Division and Respondent No.2 - the Sub-Divisional Officer, Kalwan to pay compensation, if found due, to the Petitioner as per law. The Petitioner had applied for modification of the said order by filing Civil Application 916 of 2003. The Petitioner had requested to add the word 'present' before the words 'market value'. The Division Bench in its order dated 11th December, 2003 while disposing of the said Application observed that it is not possible to accede to the request of the Petitioner. This Court has fairly observed that it was not possible to go into those questions of fact and that too in a civil application taken out in a disposed of writ petition. This Court further observed that if the Petitioner is aggrieved by any order passed by any authority, he is always at liberty to adopt appropriate proceedings against that order if he is so advised. It was also observed that the Court has not expressed any opinion on the merits of the case.

4. The Petitioner again approached this Court in a subsequent petition being Writ Petition 1914 of 2004 praying for a direction to to the Respondents to comply with the order passed by this Court in Writ Petition 3505 of 2002 on 5th September, 2002 in so far as

payment of compensation is concerned and the compensation of Rs.52,80,633/- awarded by Respondent No.2. i.e. Sub-Divisional Officer, Kalwan by passing an Award on 3rd February, 2003 as per the direction given by this Court in the said writ petition be paid to the Petitioner exclusively forthwith along with the interest at the rate of 16% per annum on the said amount from the date of Award i.e. 3rd February, 2003 till realization of the said amount.. A Division Bench in its order dated 8th March, 2004 relying on the order passed in Writ Petition 3505 of 2002 held that the prayer made in that Petition cannot be granted and accordingly dismissed that Petition. It is however clarified that the order is passed without expressing any opinion on the merits of the matter. Liberty was granted to the Petitioner to adopt such proceedings as may be advised and in such an event the order will not come in his way.

5. Pursuant to this order it appears that the Petitioner has approached the Sub-Divisional Officer, Kalwan with a request to grant an amount of Rs.52,80,633/-. It is the grievance of the Petitioner that no order on the said representation was passed. It appears that the Sub-Divisional Officer, Kalwan disposed of the application filed by the Petitioner on 18th January, 2001 wherein

also the Petitioner has made similar request to pay him compensation of the amount of Rs.52,80,622/-.

6. From the above facts it is clear that as far as repeated requests claiming compensation of Rs.52,80,633/- of the trees are concerned, it appears from the orders passed by this Court that repeatedly this Court rejected the said prayer in no uncertain terms. The Petitioner cannot take advantage of some observations made namely, that the Court has not expressed any opinion on merits, and the same need not be a ground to raise the dispute again by filing subsequent petitions. Apart from that, the Sub-Divisional Officer, Kalwan after appreciating the relevant Award No.32/75 dated 30th August, 1976 and other material has observed as under :

> "Point No.(f) of the said Award whether there are any standing trees on the Surplus land? The said Surplus land has no standing trees on it is clear from the point (f) of the Original Award. There was no Appeal by the Applicant to any Competent Authority regarding the Non-acceptance of the Original Award as is evident from the available documents. Amount of Rs.532=50 was declared as an amount of Compensation to be paid. While approving the said Amount Asst. District Collector, Nasik, Division Nasik, reduced the amount from Rs.532=50 to Rs.355=00 and the same was sent to Addl. Tahsildar and Surplus Land Tribunal, while

passing the Amended Orders on the same dated 7.10.78 approved an amount of Rs.355.00 in favour of the Applicant. After the said land was taken into possession by the Government the Applicant tried to claim Compensation by showing the standing trees on it was brought to notice. There was no enquiry as to see whether the trees in respect of this valuation has been carried out by the Forest Department had been in existence or not.

The Honourable High Court had refused to add the word present before the word market value in Writ Petition No.1914/2004. The Applicant Shri. Deoram Shankar Warde is not entitled to any Compensation regarding the trees, as the existence of trees is not shown by 7/12 extract of Gat No.46, Old Survey No.22 from year 1957-58 to 1975-76 and by the Award 32/75 dated 14.6.76. The present Award dated 3.2.2003 according to No. KU/KA/KAVI/140/2003 of Rs. 52,80,633/- (Fifty Two Lacs Eighty Thousand and Six Hundred and Thirty Three only) is based on wrong and erroneous information and the same is revoked. The Application of the Applicant Shri. Shankar Deoram Warde regarding the Compensation of the trees dated 18.7.01 is being disposed of and there would be no Compensation for the said trees."

The aforesaid finding after appreciation of the facts cannot be a subject matter of the Petition under Article 226 of the Constitution.

8. The learned counsel appearing for the Petitioner submitted that there is no provision under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 whereby the authority can send and pass the interim order. It is the submission of the learned counsel that the award of Rs.52,80,633/- by the Sub-Divisional

Officer is a final award for all purposes and it cannot be termed as a draft award.

9. Section 25 (4)(b) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 clearly provides that no award allowing compensation shall be made if the compensation exceeds fifty thousand rupees, without the previous approval of the State Government.

10. In view of this, the Sub-Divisional Officer was required to obtain approval of the draft award from the State Government. Once the State Government refuses to approve the draft award of the Sub-Divisional Officer, the interim award of the Sub-Divisional Officer raises all interim points and it is virtually no award in the eyes of law. We, therefore, see no merit in the submission advanced before us.

11. In view of the above, we see no merit in the Petition. The Petition is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.